

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Residential Building
Contractor Certificate of Exemption
Issued to Bradly Timian, Individually and
d/b/a Taylor Made Roofing & Remodeling
Certificate of Exemption No. 20095301

FINDINGS OF FACT
CONCLUSIONS, AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on January 27, 1999, at 9:30 a.m. at the Department of Commerce offices in St. Paul, Minnesota. Fabian Hoffner, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Bradly Timian, 7633 First Avenue South, Richfield, Minnesota 55423. The record closed on February 24, 1999, upon receipt of a letter from counsel for the Department verifying service of the Notice of and Order for Hearing upon the Respondent at his last known address.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact David Jennings, Commissioner, 133 East Seventh Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

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STATEMENT OF ISSUE

The issue in this case is whether the Respondent has engaged in conduct which warrants the imposition of civil penalties or discipline against his residential building contractor certificate of exemption pursuant to Minn. Stat. §§ 45.027, subds. 6-7, and 326.91. Specifically, it must be determined whether the Respondent accepted

compensation for roofing work from two customers but failed to complete a commensurate amount of the work; failed to replace a customer's roof vents as agreed in the contract; performed roofing work without first obtaining applicable local building permits; stated on his contract forms that he is licensed when in fact he only has a certificate of exemption; obtained a building permit when his certificate of exemption had lapsed; or wrote two checks with non-sufficient funds in the account and, if so, whether he thereby (1) engaged in an act or practice which demonstrates him to be incompetent, untrustworthy, or financially irresponsible, in violation of Minn. Stat. § 326.91, subd. 1(6); (2) performed negligently or in breach of contract, in violation of Minn. Stat. § 326.91, subd. 1(4); (3) engaged in unlicensed residential building contractor, remodeler, or roofer, in violation of Minn. Stat. § 326.84, subs. 1 and 1b and 326.842; (4) engaged in fraudulent, deceptive, or untrustworthy practices in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1(H); or (5) made material misrepresentations in the procurement of building contracts in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. 2891.0040, subp. 1(C). In addition, it must further be determined whether the Respondent failed to respond to Department requests within the time allotted, in violation of Minn. Stat. § 45.027, subd. 1a.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Hearing and Order to Show Cause in this matter was served upon the Respondent by first class U.S. mail on December 22, 1998, at 7633 First Avenue South, Richfield, Minnesota 55423, h9s

2. The Notice of and Order for Hearing and Order to Show Cause served on the Respondents contained the following informational notice:

If Respondent Bradly Timian, without the prior consent of the Judge, fails to attend or otherwise appear at the hearing in this matter, or at any prehearing conference or settlement conference in this matter or fails to comply with any interlocutory orders of the Judge, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved and Respondent's certificate may be revoked or suspended or Respondent may be censured and/or civil penalties may be imposed on Respondent without further proceedings.

(Emphasis in original.)

3. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. The Respondent did not appear at the hearing scheduled for January 27, 1999, or have an appearance made on his behalf. He also did not contact the Administrative Law Judge between January 27, 1999, and the date on which this Report was issued.

4. Because the Respondent failed to appear at the hearing in this matter, he is in default. Pursuant to Minn. R. 1400.6000 (1997), the allegations contained in the Notice of and Order for Hearing and Order to Show Cause are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Department of Commerce and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.024, 45.027, and 326.91.

2. The Department has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. Stat. § 1400.6000, the allegations contained in the Notice of and Order for Hearing and Order to Show Cause are hereby taken as true.

4. The Respondent has violated Minn. Stat. §§ 45.027, subd. 1a, 326.84, subds. 1 and 1b, 326.842, and 326.91, subds. 1(2), (4), and (6), and Minn. R. 2891.0040, subps. 1(C) and (H). The Respondent is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 326.91.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the Respondent's residential building contractor certificate of exemption and impose an appropriate civil penalty.

Dated this 2nd day of March, 1999

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default.

NOTICE OF AGENCY DECISION

Under Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

